

CERTIFIED TRANSLATION

TRANSLATION

VL1988.B 44-1987
Tfs 1988, 581

Judgment by the Danish Western High Court of 12 September 1988, case no B 44-1987

Interest issue – Loan commitment – Firm of stockbrokers – Limitation of actions

♦ The Danish Western High Court upheld a taxpayer's claim that some tax claims concerning the income years 1978 and 1979 had become barred by limitation because the taxpayer had been refused the right to deduct interest expenses concerning a loan commitment with a firm of stockbrokers to purchase treasury notes. The High Court had regard to the assessment authorities, based on the circular by the State Inland Revenue Department (*Statsskattedirektoratet, SD*) of 29 October 1979, having had reason immediately to raise the tax claims in question instead of awaiting the result of an investigation of the firm of stockbrokers in question.

The Danish Western High Court

Dissenting judgment

In a case brought by a taxpayer against the Danish Ministry of Taxation before the Danish Western High Court the Western High Court has set aside the decision by the State Inland Revenue Department and the Board of Assessment made in 1986 according to which the taxpayer was refused the right to deduct the interest expense concerning a loan commitment with a firm of stockbrokers with effect for the income years 1978 and 1979. The loan had been taken out to finance the purchase of treasury notes. The plaintiff claimed that the claim raised for the residual tax for the years in question because of the changed tax assessments had become barred by limitation under section 1, para (4), of the Danish Limitation Act of 1908.

The majority of the judges of the Danish Western Court found that the circular on loan commitments of this nature prepared by the State Inland Revenue Department of 29 October 1979 had given the assessment authorities reason immediately to raise the tax claims in question against the plaintiff instead of awaiting the results of the investigations concerning the firm of stockbrokers in question that was only started in 1983. The Danish Western High Court thus upheld the plaintiff's claim.

The Danish Ministry of Taxation was ordered to pay legal costs of DKK 13,500. There was a dissenting judgment by one judge.

This judge was not of the opinion that there was any basis for assuming that the tax authorities had been negligent by commencing and carrying out the investigation of the firm of stockbrokers.

VL1988.B 44-1987
Tfs 1988, 581**Vestre Landsrets dom af 12. september 1988, j.nr. B 44-1987**
Rente spørgsmål – Lånearrangement – Vekselerfirma –
Forældelse

- ♦ Vestre Landsret tiltrådte en skatteyders påstand om, at nogle skattekrav vedr. indkomstårene 1978 og 1979 som følge af, at skatteyderen var nægtet ret til at fradrage renteudgifter vedr. et lånearrangement hos et vekselerfirma til køb af statsgældsbeviser, var forældet. Landsretten lagde til grund, at ligningsmyndighederne på baggrund af SD's cirkulære af 29. oktober 1979 om lånearrangementer havde haft anledning til straks at rejse de omhandlede skattekrav, i stedet for at afvente resultatet af en undersøgelse vedr. det pågældende vekselerfirma.

Vestre Landsret**Dissens**

I en af en skatteyder mod Skatteministeriet ved Vestre Landsret anlagt sag har Vestre Landsret omstødt Statsskattedirektorats og ligningsrådets afgørelse truffet i 1986, og hvorefter skatteyderen med virkning for indkomstårene 1978 og 1979 var nægtet ret til at fradrage renteudgiften vedrørende et lånearrangement med et vekselerfirma. Lånet var optaget til finansiering af købet af statsgældsbeviser. Sagsøgeren nedlagde påstand om, at det som følge af de ændrede skatteansættelser rejste krav på restskatten for de omhandlede år var forældet efter forældelsesloven af 1908 § 1, nr. 4.

Vestre Landsrets dommerflertal fandt, at det af Statsskattedirektoratet den 29. oktober 1979 udfærdigede cirkulære om lånearrangementer af den her omhandlede karakter havde givet ligningsmyndighederne anledning til straks at rejse de omhandlede skattekrav over for sagsøgeren i stedet for at afvente resultaterne af de undersøgelser vedrørende det pågældende vekselerfirma, som først blev påbegyndt i 1983. Vestre Landsret gav derfor sagsøgeren medhold.

Skatteministeriet blev pålagt 13.500 kr. i sagsomkostninger.

En dommer afgav dissens.

Denne dommer mente ikke, at der var grundlag for at antage, at skattemyndighederne havde udvist forsømmelighed ved iværksættelsen og gennemførelsen af undersøgelsen hos vekselerfirmaet.

I, the undersigned, Jeanette Riis, certify that the preceding text in the English language is to the best of my knowledge and belief a true and faithful translation of the attached Danish judgment referred to as TfS 1988, 581V in the Danish language.

Witness my hand and official seal.

Copenhagen, 25 May 2022



MA in Translation and Interpretation (English)